

Summary of SC94641, *Heath A. Dunivan v. State of Missouri and Missouri State Highway Patrol*

Appeal from the Laclede County circuit court, Judge Kenneth Hayden
Argued and submitted April 22, 2015; opinion issued July 21, 2015

Attorneys: The state and patrol were represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321; and Dunivan was represented by Chris Rasmussen of Deputy and Mizell LLC in Camdenton, (573) 346-9990.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The attorney general appeals a circuit court judgment overruling his motion to intervene in a case in which the court ordered that an offender be removed from the state's sex offender registry and relieved of his duty to register. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. Because this case involves the state's interest – removal of a sex offender's name from the state's sex offender registry – the attorney general is entitled to intervene as a matter of statutory right. The highway patrol – which has a statutory obligation to maintain the registry accurately – also has an absolute right to intervene. Both motions – filed months before the court entered its final judgment – were timely. The prosecutor did not represent the state's interests adequately because the prosecutor did not offer evidence or argument about the offender's independent obligation under federal law to register as a sex offender in Missouri, and so the court's judgment did not take into account the interplay of state and federal law.

Facts: Heath Dunivan pleaded guilty in October 1993 to one count of second-degree sex abuse, which required him to register as a sex offender. In March 2012, Dunivan petitioned the circuit court for removal from Missouri's sex offender registry pursuant to section 589.400.8, RSMo, and for relief from his obligation to register as a sex offender. Dunivan gave the local prosecutor notice of his petition; the statute does not require notice to be sent to the attorney general or the state highway patrol. The prosecutor represented the state during a May 2013 hearing but did not cross-examine Dunivan or argue in opposition to his petition. The circuit court ultimately issued an order that Dunivan be removed from the registry and relieved of his obligation to register. The court's order was not denominated as a judgment and was not directed at any party. The attorney general and highway patrol received a copy of the court's order in July 2013; the next month, the attorney general filed a motion to intervene as a matter of right pursuant to Rule 52.12(a) on his own behalf and that of the highway patrol, seeking to set aside the court's order. The court overruled the motion to intervene. The attorney general appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) The attorney general is entitled to intervene as a matter of right in this case. Section 27.060, RSMo, confers on him an unconditional statutory right to intervene by directing the attorney general to appear and interplead, answer or defend in any proceeding or tribunal in which the state's interests are involved. The statute does not restrict the time in which

the attorney general may appear and defend in an action when the state's interest is involved. As such, the attorney general's motion to intervene – filed after the court ruled but months before the court issued its final judgment – was timely. Further, the statute gives the attorney general an unconditional right to intervene in Dunivan's action seeking to be removed from the state's sex offender registry. The state has an interest in a court judgment removing a sex offender's name from the sex offender registry, and the attorney general may intervene even if the state is represented by a local prosecuting attorney.

(2) The circuit court erred in overruling the highway patrol's motion to intervene. The motion was timely because it was filed before the court issued its final judgment. Further, the patrol has an interest in the subject matter of the action because it has a statutory obligation to maintain Missouri's sex offender registry accurately. It also is the proper party to appeal a circuit court's judgment removing a sex offender from the registry because – as the entity that maintains the sex offender registry – it must comply with a court order removing or exempting an offender from the registry. Additionally, if – as the patrol argues – Dunivan has an independent obligation under federal law to register as a sex offender in Missouri, then the circuit court's judgment directing that Dunivan be removed impedes the patrol from discharging its responsibilities and leaves it in an uncertain position about how to proceed. The patrol's interests were not represented adequately by the local prosecutor. The prosecutor issued witness subpoenas, represented the state at the hearing and contacted the victim to inquire whether she wished to attend the proceedings, but the prosecutor did not offer any evidence or argument concerning Dunivan's independent obligation under federal law to register in Missouri. As such, the circuit court did not take into account the interplay between state and federal sex offender registration requirements when rendering its decision.